

PATENT COOPERATION TREATY

PCT


INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

REC'D 23 MAR 2006

WIPO PCT

Applicant's or agent's file reference 2K/2BM76MJ/1	FOR FURTHER ACTION See Form PCT/PEA/416	
International application No. PCT/EP2005/000191	International filing date (day/month/year) 07.01.2005	Priority date (day/month/year) 07.01.2004
International Patent Classification (IPC) or national classification and IPC A61K35/78, A61P19/00, A61P29/00, A61P33/14, A61P37/00		
Applicant TAAL, Leendert		
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 7 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p style="margin-left: 20px;">a. <input type="checkbox"/> sent to the applicant and to the International Bureau a total of sheets, as follows:</p> <p style="margin-left: 40px;"><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p style="margin-left: 40px;"><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p style="margin-left: 20px;">b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>		
<p>4. This report contains indications relating to the following items:</p> <p style="margin-left: 20px;"><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p style="margin-left: 20px;"><input type="checkbox"/> Box No. II Priority</p> <p style="margin-left: 20px;"><input checked="" type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p style="margin-left: 20px;"><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p style="margin-left: 20px;"><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p style="margin-left: 20px;"><input type="checkbox"/> Box No. VI Certain documents cited</p> <p style="margin-left: 20px;"><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p style="margin-left: 20px;"><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>		
Date of submission of the demand 07.11.2005	Date of completion of this report 22.03.2006	
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Friederich, M Telephone No. +49 89 2399-7860	



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Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

Description, Pages

1-8 as originally filed

Claims, Numbers

1-10 as originally filed

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

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Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:
- ☐ the entire international application,
 - ☒ claims Nos. 10 with respect to industrial applicability
because:
 - ☒ the said international application, or the said claims Nos. 10 relate to the following subject matter which does not require an international preliminary examination (specify):
see separate sheet
 - ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
 - ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
 - ☐ no international search report has been established for the said claims Nos.
 - ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
 - the written form ☐ has not been furnished
 - ☐ does not comply with the standard
 - the computer readable form ☐ has not been furnished
 - ☐ does not comply with the standard
 - ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.
 - ☐ See separate sheet for further details

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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-10
	No: Claims	
Inventive step (IS)	Yes: Claims	
	No: Claims	1-10
Industrial applicability (IA)	Yes: Claims	1-9
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

Re Item III

Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

Claim 10 relates to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of these claims (Article 34(4)(a)(I) PCT).

Re Item V

Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

Reference is made to the following documents:

- D1: MUR ERICH ET AL: "Randomized double blind trial of an extract from the pentacyclic alkaloid-chemotype of *uncaria tomentosa* for the treatment of rheumatoid arthritis." THE JOURNAL OF RHEUMATOLOGY. APR 2002, vol. 29, no. 4, April 2002 (2002-04), pages 678-681, XP009039229 ISSN: 0315-162X
- D2: DE 198 53 919 A (WIRTH WOLFGANG) 25 May 2000 (2000-05-25)
- D3: DATABASE WPI Section Ch, Week 200262 Derwent Publications Ltd., London, GB; Class B04, AN 2002-581546 XP002305247 & RU 2 185 182 C2 (KHOVOSTENKOV S I) 20 July 2002 (2002-07-20)
- D4: WO 02/47701 A (KIM KYOUNG-MI ; KIM MIN-YOUNG (KR); ANGIOLAB INC (KR); MOON CHANG-HEE) 20 June 2002 (2002-06-20)
- D5: EP-A-0 270 690 (DAINIPPON INK & CHEMICALS ; NIPPON HYPOX LAB INC (JP)) 15 June 1988 (1988-06-15)
- D6: US 2002/192241 A1 (MCCLEARY JOEL ET AL) 19 December 2002 (2002-12-19)

If not indicated otherwise, the relevant passages are those mentioned in the International

search report.

Art. 33(2) The present application meets the requirements of Article 33(2) PCT, because the subject-matter of **claims 1-10** appears to be new in the sense of Article 33(2) PCT since the combination of the claimed plant compositions is not disclosed in the prior art.

Art. 33(3) The subject-matter of **claims 1-10** is not considered to involve an inventive step in the sense of Article 33(3) PCT.

D1 discloses the use of *Uncaria tomentosa* for the treatment of rheumatoid arthritis, from which the subject-matter of the present application differs in that *Uncaria tomentosa* is combined with further plant (extracts).

The problem to be solved by the present invention may therefore be regarded as how to provide an improved medicament for the treatment of rheumatoid arthritis.

The present application suggests to solve the problem posed by the claimed combinations.

Yet, it is known from the teaching of D2-D6 that the additional plant (extracts) are useful in the treatment of rheumatoid diseases or show antiinflammatory effects.

Taking into account the teaching of the cited prior art the following reasoning applies:

With respect to the subject-matter of the remaining **claims 1-10** the applicant's attention is drawn to the fact that there seems to be no basis for inventive step within the present application as filed since no evidence can be found that the features which are novel result in a solution of the posed problem which could not have been foreseen by the skilled person.

Being aware of the teaching of D1 the skilled person performed an arbitrary

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choice out of one list containing all known antirheumatic plants to select. Since there is no surprising effect resulting from that choice, the solution proposed in **claims 1-9** of the present application is not considered to be inventive in the sense of Article 33(3) PCT.

Art. 33(4) The subject-matter of **claims 1-9** is considered to be industrially applicable in the sense of Art. 33(4) PCT.

For the assessment of the present **claim 10** on the question whether they are industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claims. The EPO, for example, does not recognize as industrially applicable the subject-matter of claims to the use of a compound in medical treatment, but may allow, however, claims to a known compound for first use in medical treatment and the use of such a compound for the manufacture of a medicament for a new medical treatment.